



**Response Under 37 CFR 1.116
Expedited Procedure
Examining Group: 3633**

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Robert David BLACK and John Alexander BLACK
Serial no. : 10/529,573
Confirmation No. :
Filed : with an effective filing date of October 17, 2003
For : CONSTRUCTIONAL UNIT
Group Art Unit : 3633
Examiner : Omar F. Hijaz
Docket : ROCKCO P69AUS

**Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**

NOTE: The following certificates may be used with this form:

- *Form 8-1B, Certificate of First Class Mailing With Mail Stop (CM-MS). Be sure to indicate "Mail Stop Petition."*
- *Form 8-2A, Certificate of Facsimile Transmission (Centralized Fax Number) (CT-CF). Papers should be faxed to: (571) 273-8300. Be sure to indicate "Special Processing Submission" on the certificate.*
- *Form 8-3B, Certificate of Express Mailing With Mail Stop (CEM-MS). Be sure to indicate "Mail Stop Petition."*
- *Form 8-4, Certificate of EFS Submission (CEFS).*

**PETITION FOR REVIVAL OF AN APPLICATION
FOR PATENT ABANDONED UNINTENTIONALLY UNDER
37 C.F.R. § 1.137(b)**

NOTE: In a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995, any petition to revive pursuant to this section must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. Any terminal disclaimer pursuant to this paragraph must also apply to any patent granted on any continuing utility or plant application filed before June 8, 1995, or a continuing design application that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the application for which revival is sought. The provisions of this paragraph do not apply to lapsed patents. 37 C.F.R. § 1.137(d)(2).

NOTE: 37 C.F.R. 1.137(c):

(c) Reply. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must include payment of the issue fee or any outstanding balance. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

- ☒ In connection with the required reply which is required by this petition, please note that:
- ☐ the response in this case is the filing of a continuation application having an express abandonment of the instant application upon its revival conditioned on the granting of a filing date to the continuing application copending with this application.
 - ☒ the response is by the filing of a request for continued examination in compliance with § 1.114.
 - ☐ the required issue fee or any portion thereof is paid.
 - ☐ the required publication fee is paid.
 - ☐ Other

4. Fee (37 C.F.R. 1.17(m))

Application status is:

- ☒ Small business entity—fee \$810.00
 - ☐ A statement is attached.
 - ☒ A statement was filed.
- ☐ Other than small entity—fee \$1,620

5. Payment of fee

- ☒ Attached is a ☒ check ☐ money order in the amount of \$ 810.00
- ☐ Authorization is hereby made to charge the amount of ☐ ☐
 - ☐ to Deposit Account No. _____

NOTE: In accordance with the Notice of November 5, 1990 (1121 O.G. 6), an application abandoned under 37 C.F.R. § 1.53(d) for failure to timely provide the appropriate filing fee, oath or declaration and/or surcharge may be revived under the procedure of 37 C.F.R. § 1.137(b).

1. This application became abandoned on May 18, 2009.

NOTE: Extensions under 37 C.F.R. § 1.136 are available only if asked for "prior to or with the response." Accordingly, if the question of abandonment arises when the provisions of § 1.136 can no longer be used, then the application is abandoned when the unextended time for response expired. Therefore, no extension fees are due on a petition for revival. Thus: An application which is abandoned for failure to respond within a set period with no extension fee having been paid, would not require the payment of extension fees as a condition for revival. M.P.E.P. § 711.03(c), 6th ed., rev. 2.

2. This application became abandoned because the failure to prosecute was an unintentional delay. The entire delay in filing the required reply from the due date until the filing of this petition was unintentional 37 C.F.R. § 1.137(b)(3).

3. Response or action required

☐ has been filed.

☒ is attached.

(complete the following, as applicable)

NOTE: The PTO accepts the filing of a continuing application as a response under 37 C.F.R. 1.137. To facilitate processing in such a case, the petition to revive should specifically refer to the filing of a continuing application and also include an express abandonment of the prior application conditioned upon the granting of the petition and the granting of a filing date to the continuing application. Notice of May 13, 1983, (1031 O.G. 11-12). See also M.P.E.P. § 711.03(c), 6th ed., rev. 2. "In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof." 37 C.F.R. § 1.137(b)(1).

- ☐ to Credit Card as shown on the attached credit information authorization form PTO-2038.

A duplicate of this petition is attached.

WARNING: Credit card information should not be included on this form as it may become public.

6. Showing:

(complete the following, if applicable)

- ☐ Because this petition is more than 3 months after the date the Office first notified the applicant that the application is abandoned, applicant additionally submits a showing as to how the delay between the date the applicant was first notified that the application is abandoned and the filing of this petition under 37 C.F.R. § 1.134(b) was unintentional. 62 Fed. Reg. 53,131, 53,159 (Oct. 10, 1997).
- ☐ Because this petition is more than 1 year after the date of abandonment of the application, applicant additionally submits further information as to when applicant (or applicant's representative) first became aware of the abandonment of the application, and a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant (or applicant's representative). 62 Fed. Reg. 53,131, 53,159 (Oct. 10, 1997).

7. Terminal Disclaimer:

NOTE: 37 C.F.R. 1.137(d):

(d) Terminal disclaimer.

(1) Any petition to revive pursuant to this section in a design application must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. Any petition to revive pursuant to this section in either a utility or plant application filed before June 8, 1995, must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the lesser of:

- (i) The period of abandonment of the application; or
- (ii) The period extending beyond twenty years from the date on

which the application for the patent was filed in the United States or, if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. 120, 121, or 365(c), from the date on which the earliest such application was filed.

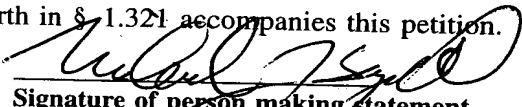
Since this application is:

- ☐ a design application
☐ a utility application filed before June 8, 1995

a terminal disclaimer and the fee set forth in § 1.321 accompanies this petition.

May 22, 2009

Date


Signature of person making statement
that abandonment was unintentional

Michael J. Bujold
(type or print name of person making
statement)

Concord, NH 03301, US
Residence of person making statement


SIGNATURE OF PRACTITIONER

Reg. No.: 32,018

Michael J. Bujold
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